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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,750	10/15/2003	Mark Budzik	TRI4546P0170US	6164
32116	7590	07/19/2006	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			SPAHN, GAY	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	<b>Application No.</b> 10/685,750	<b>Applicant(s)</b> BUDZIK, MARK	
	<b>Examiner</b> Gay Ann Spahn	<b>Art Unit</b> 3673	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 03 January 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See attached Office Communication.



**PATRICIA ENGLE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600**

*July 14, 2006*

Attachment: Interview Summary

**OFFICE COMMUNICATION**

***NOTIFICATION OF NON-COMPLIANCE  
WITH THE REQUIREMENTS OF 37 CFR 41.37(c)***

The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters; and/or does not identify the structure, material, or acts described in the specification as corresponding to each claimed function for every means plus function and step plus function for each independent claim involved in the appeal and for each dependent claim argued separately by reference to the specification by page and line number, and to the drawing, if any, by reference characters, as required by 37 CFR 41.37(c)(1)(v).

More particularly, an Order Returning Undocketed Appeal to Examiner (hereinafter "Order") was mailed to Appellant on 16 June 2006. The Order indicates that the appeal brief filed 03 January 2006 does not fully comply with 37 CFR § 41.37(c) because it "does not contain a concise explanation of independent claims 3, 5, and 7 on appeal."

Therefore, in accordance with the Manual of Patent Examining Procedure (MPEP) § 1205.03(B), Appellant is being required to correct a deficiency in the appeal brief by filing **a paper providing a summary of the claimed subject matter** (i.e.,

replacement section only) as required by 37 CFR § 41.37(c)(1)(v). **An entire new brief need not, and should not, be filed.**

The examiner notes that the subject matter of independent claim 3 was not provided in the originally filed appeal brief.

Further, with respect to all of the independent claims (i.e., claims 1, 3, 5, and 7) on appeal, Appellant must provide “[a] concise explanation of the subject matter defined in each of the independent claims involved in the appeal, **which shall refer to the specification by page and line number**, and to the drawing, if any, by reference character.” (Emphasis added).

Appellant is required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal (i.e., failure to timely respond to the Office’s requirement will result in dismissal of the appeal; see MPEP § 1215.04 and § 711.02(b)), Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this Office Communication. Extensions of time may be granted under 37 CFR 1.136.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gay Ann Spahn whose telephone number is (571)-272-7731. The examiner can normally be reached on Monday through Thursday, 8:30 am to 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia L. Engle can be reached on (571)-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Gay Ann Spahn, Patent Examiner  
July 12, 2006